IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.1158 OF 2004
AND
CRL.R.C.NO.742 OF 2004

C.A.NO.1158 OF 2004:

State rep. by
the Inspector of Police,
Jayamkondam Police Station,
Perambalur District
Crime No.792 of 1998 .. Appellant/ Complainant

Vs.

1.Ravi @ Natarajan
2.Ramalingam
3.Mohan
4.Vasanthalakshmi
5.Subashini .. Respondents/ Accused

Crl.R.C.No.742 of 2004:

S.Veerasamy .. Petitioner/ Pw1

Vs.

1.State by
the Inspector of Police,
Jayamkondam Police Station,
Perambalur District
Crime No.792 of 1998
2.Ravi @ Natarajan
3.Ramalingam
4.Mohan
5.Vasanthalakshmi
6.Subashini .. Respondents/ Accused 1 to 5

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The criminal appeal is preferred under Section 378 Cr.P.C and the criminal revision case is preferred under Sections 397 and 401 Cr.P.C against the judgment of the learned District Sessions Judge, Perambalur made in S.C.No.205 of 2002, dated 21.10.2003.

For Appellant : Mr.P.Kumaresan, APP
in CA.1158/04 and
R1 in Cr.RC.No.742/04

For Petitioner : Mr.S.Senthilnathan
in Crl.RC

For Respondents: Mr. Rajamani for
M/s.Siraj and Siraj RR1 to R5
in CA and RR2-6 in Cr.RC.742/04

COMMON JUDGMENT

(The judgment of the Court was made by M.CHOCKALINGAM, J.)

This judgment shall govern both C.A.No.1158 of 2004 and Cr.R.C.No.742 of 2004.

2.Both have arisen from the judgment of the learned District Sessions Judge, Perambalur made in S.C.No.205 of 2002, whereby the respondents 1 to 5 in the appeal, stood charged under Section 147 IPC, respondents 1 to 3 stood charged under Section 302 (2 counts) IPC and respondents 4 and 5 stood charged under Section 302 r/w S.34 (2 counts) IPC and respondents 1 to 3 stood charged under Section 506 (2) IPC and on trial, the trial court recorded an order of acquittal of all of them in respect of all the charges. The criminal appeal is preferred by the State, while the criminal revision case is preferred by P.W.1.

3.The short facts necessary for the disposal of the appeal and the revision can be stated thus:

a)P.W.1 is the President and P.W.2 is the Joint Secretary of P.M.K. Party, Jeyankondam town. They had a party office in a part of Door No.106, Bazaar Street, Jeyankondam, which belonged to Lakshmikantham Ammal, who died in the incident. The other deceased Rudrakumar is the nephew of the first deceased Lakshmikantham Ammal. A-1 is the husband of A-4. A-1 and A-3 are brothers. A-4 and A-5 are sisters. A-2 is related to all, while P.W.4 is the brother of the husband of the first deceased.

b)All the accused and the said Lakshmikantham Ammal were residing in the same premises situated in D.No.106, Bazaar Street and

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in a part of which, the said political party is running its office and they were paying Rs.750/- as a monthly rental to the said Lakshmikantham Ammal. The accused party were all opposing the occupation of the building by the political party. They were then and there raising quarrel and were adumbrating that if the building is not vacated by the political party, they would finish her off. There was a threat by the P.Ws., for which A-4 gave a complaint to the police station, which was treated as a petition and was pending enquiry.

c)While the matter stood thus, on 17.10.1998 in the night hours, Lakshmikantham Ammal apprehended danger in the hands of the accused and on her request, P.Ws.1 and 2 were actually lying in front of the house by way of security. At about 3.00 a.m., they heard a distressing noise from inside and they opened the door and found A-4 and A-5 caught hold of the legs of Lakshmkikantham Ammal and A—1 to A-3 stabbed her. Immediately, all the accused went to upstairs, where they attacked Rudrakumar. All the accused came down and ran away. P.W.4 found all the accused going from that place. While all the accused were proceeding, P.W.6 found all of them in the Jeyankondam Bus stand at about 4.00 a.m. P.W.8 also found all the accused in the Jeyankondam bus stand that day. P.W.1, who was under a grip of fear, did not go to the police station immediately and he went to the police station at about 6.00 a.m. and the para constable, who was there, asked him to come by 8.00 a.m. Again, P.W.1 went to the police station at 8.00 a.m. He gave Ex.P.1, the complaint, to P.W.11, the Sub Inspector of Police. On the strength of Ex.P.1, a case came to be registered in Crime No.792 of 1998 under Sections 147, 148, 302 and 506(2) IPC. Ex.P.12, the FIR was despatched to the Court.

d)On receipt of the copy of the FIR, P.W.12, the Inspector of Police, took up the investigation, proceeded to the spot, made an inspection in the presence of the witnesses and prepared Exs.P.4 and P.5, observation mahazars and Exs.P.13 and P.15, the rough sketchs. He conducted inquest on the dead body of Lakshmikantham Ammal in the presence of the witnesses and panchayatdars and prepared Ex.P.14, the inquest report. The dead body of Lakshmikantham Ammal was sent to the Government Hospital for the purpose of autopsy. P.W.12 has also conducted inquest on the dead body of Rudrakumar in the presence of the witnesses and panchayatdars and prepared Ex.P.17, the inquest report. His dead body was also sent to the Government Hospital for the purpose of autopsy.

e)P.W.3, the Doctor attached to the Government Hospital, Jeyankondam has conducted autopsy on the dead body of Lakshmikantham Ammal. He has issued Ex.P.2, the post-mortem certificate, wherein he has opined that the deceased would appear to have died of shock and haemorrhage due to the injury to vital organ – kidney. P.W.3 has also conducted autopsy on the dead body of Rudrakumar and has issued

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Ex.P.3, the post-mortem certificate, wherein he has opined that the deceased would appear to have died of shock and haemorrhage due to injuries to vital organs, namely Lungs, liver and kidneys.

f) Pending investigation, the Investigating Officer came to know that on 23.10.1998, A-1 and A-2 surrendered before the Judicial Magistrate No.7, Tiruchy, while A-3 to A-5 surrendered before the Judicial Magistrate, Cuddalore on 26.10.1998. The Investigating Officer has filed an application for police custody, which was ordered on 4.11.1998. Accordingly, the accused were taken to police custody. While they were in police custody, A-1 volunteered to give a confessional statement, which was recorded in the presence of P.W.8 and the another witness. The admissible part of which was marked as Ex.P.8. A-2 volunteered to give a confessional statement, which was also recorded in the presence of the witnesses and the admissible part of which was marked as Ex.P.7. Pursuant to the confessional statements, they produced knives, which were used at the time of occurrence and they were recovered in the presence of the witnesses under a cover of mahazar. The accused were sent for judicial remand. All the M.Os recovered from the place of occurrence, from the dead body of both the deceased and the M.Os recovered from the accused pursuant to the confessional statements were subjected to chemical analysis by the Forensic Science Department. On completion of the investigation, the Investigating Officer has filed the final report before the Judicial Magistrate concerned.

4.The case was committed to the Court of Sessions and necessary charges were framed. In order to substantiate the charges, the prosecution has examined 12 witnesses and relied on 18 exhibits and 5 M.Os. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C as to the incriminating circumstances found in the evidence of prosecution witnesses, which they flatly denied as false. On the side of defence, 4 witnesses were examined and 12 exhibits were relied on and no M.Os were marked. On completion of the evidence on both sides, the trial court heard the arguments advanced on either side and took a view that the prosecution has not proved the case beyond reasonable doubt and has acquitted all the accused in respect of the charges levelled against them. Hence, this appeal at the instance of the State and the criminal revision case at the instance of P.W.1.

5.Arguing for the State, the learned Additional Public Prosecutor would submit that, the trial Judge has acquitted all the accused mainly on two grounds, namely there was a delay in lodging the report; that the occurrence has taken place at 3.00 a.m. on 18.10.1998, but the report was given at 9.00 a.m. and thus, there was a delay and the explanation tendered by the prosecution remains unacceptable and it was fatal to the prosecution case; that the trial court has also narrated number of reasons for disbelieving the evidence of P.Ws.1 and 2, but all the reasons adduced by the lower

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court were flimsy; that in the instant case, the prosecution had not only the evidence of P.Ws.1 and 2, which was natural, cogent and acceptable, but also the evidence of P.Ws.6 and 8; that P.W.6 is an Auto Driver and he was an independent person; that he has categorically spoken the fact that he has seen all the accused at 4.00 a.m. at the Jeyankondam bus stand; that the occurrence has taken place at 3.00 a.m. and immediately, after the occurrence, according to P.Ws.1 and 2, all the accused fled away from the place of occurrence and they were about to flee from the place and hence, they went to the bus stand at 4.00 a.m.; that the evidence of P.W.6, which is a strong circumstance, is in favour of the prosecution.

6.Added further the learned Additional Public Prosecutor that in the instant case, there was recovery of weapons of crime from A-1 and A-2, pursuant to the confessional statements given by them when they were taken to police custody from the concerned Judicial Magistrate; that P.W.8 has been examined as to the confessional statements and also for the recovery of weapons of crime, which is a strong circumstance in favour of the prosecution; that in the instant case, the ocular testimony is in corroboration with the medical evidence and apart from that there was recovery of weapons of crime pursuant to the confessional statements made by the accused and hence, the lower court should have accepted the case of prosecution, but has acquitted all the accused of the charges on the said grounds, which were not reasonable and the judgment of the lower court lacks in reason and it is also perverse and it has got to be set aside by the Court and the accused have got to be dealt with in accordance with law.

7.The learned counsel for the revision petitioner would submit that he would subscribe the arguments advanced by the learned Additional Public Prosecutor.

8.The Court heard the arguments advanced by the learned counsel for the respondents/accused, who made a sincere attempt in sustaining the judgment of acquittal rendered by the lower court.

9.The Court has paid its anxious consideration on the submissions made.

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10.At the outset, it is fit and proper to state the settled proposition of law that in a given case like this, where the trial court, on appreciation of evidence, has recorded an order of acquittal, unless and until the judgment is perverse or the judgment lacks in reason, the appellate forum should not disturb the judgment of the lower court. The Court is of the considered opinion that in the instant case, after applying the above legal proposition, the Court has to necessarily sustain the judgment of the lower court. The gist of the case of prosecution, as could be seen, is that

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Lakshmikantham Ammal is the owner of the property in Door No.106, Bazaar Street, Jeyankondam and she was occupying a part of the same. Admittedly, all the accused, who are closely related to each other and also the said Lakshmikantham Ammal were residing within the same premises. Two petitions were given before the R.D.O. regarding the possession of the property and they were pending enquiry. A-4 also gave a complaint against the threat made by the members of the political party, who were having office in Door No.106, Bazaar Street, which was in occupation of not only by the accused, but also by the Lakshmikantham Ammal during the relevant period.

11.While the matter stood thus, the occurrence has taken place at about 3.00 a.m. on 18.10.1998. Even as per the prosecution case, Lakshmikantham Ammal entertained fear of danger in the hands of the accused and on her request, P.Ws.1 and 2 were actually lying in front of the house for the purpose of security. According to P.Ws.1 and 2, both of them heard a distressing cry from inside the house and they opened the door and found A-4 and A-5 caught hold of the legs of Lakshmikantham Ammal and the other accused stabbed her on different parts of her body. Thereafter, all the accused ran towards upstairs, where they attacked Rudrakumar. P.Ws.1 and 2 heard the distressing cry of Rudrakumar and thereafter, they saw the dead body of Rudrakumar. The entire case of prosecution rested on the evidence of P.Ws.1 and 2, as eyewitnesses. It is highly doubtful whether P.Ws.1 and 2 could have been present at the time of occurrence as put forth by the prosecution for more reasons than one. If P.Ws.1 and 2 were actually lying in front of the house on the request of Lakshmikantham Ammal for the purpose of security and if they really witnessed such an occurrence, the natural course of conduct would be to interfere and intervene and to prevent such an occurrence. But, they have not done so. Both the witnesses have spoken that they were under a grip of fear, which is highly unbelievable. Apart from that, the first occurrence has taken place in the ground floor and the other part of the occurrence, where Rudrakumar was being murdered, has taken place in the upstairs. Thus, the whole occurrence could have taken place within the time interval of 5 or 10 minutes. Under these circumstances, there was all possibility for both P.Ws.1 and 2 to raise alarm, but they have not done so, which is the crowning circumstance to disbelieve the evidence of P.Ws.1 and 2 as to their presence. It is an admitted position that the police station is situated within 200 feet away from the place of occurrence. The statement given by P.Ws.1 and 2 that they were under a grip of fear and therefore, P.W.1 went to the police station at 6.00 a.m. after three hours, was highly unbelievable for the reasons that P.W.1 was the President of the political party, while P.W.2 was the Joint Secretary and it is quite unnatural that because of fear, they did not go to the police station. According to P.W.1, he went to the police station at 6.00 a.m. and the para Constable asked him to come by 8.00 a.m. Again, he went to the police station at 8.00 a.m. and gave a complaint. Therefore, the conduct of P.Ws.1 and 2, as

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narrated above, would clearly speak about the fact that they could not have been present at the place of occurrence.

12.According to P.W.4, he witnessed the accused proceeding from the place of occurrence with knives. Admittedly, he is a close relative of Lakshmikantham Ammal. If to be so, one would expect him to go to the police station and give a complaint, but he has also not done so. This would go to show that P.W.4 also could not have been present at the place of occurrence. It is true, medical evidence was available, where from, it could be seen that both the deceased, namely Lakshmikantham Ammal and Rudrakumar, died out of homicidal violence. The prosecution has successfully proved the fact that both of them died out of homicidal violence. The other part of the evidence available to the prosecution was the evidence of P.Ws.6 and 8. According to the learned Additional Public Prosecutor, the evidence of P.Ws.6 and 8 would be available to connect the accused with the crime. Insofar as P.W.6 was concerned, he was an Auto driver. He saw all the accused near the bus stand at Jeyankondam. It is not the case of prosecution that the place of occurrence was near the bus stand. Merely because P.W.6 has seen the accused at the bus stand, it cannot be a reason to connect the accused with the crime. Apart from that, in respect of recovery of weapons of crime, P.W.8 has been examined. A-1 and A-2 surrendered before the Judicial Magistrate No.7, Trichy, while A-3 to A-5 surrendered before the Judicial Magistrate, Cuddalore and police custody was ordered. While they were in police custody, A-1 and A-2 gave confessional statements and knives have been recovered. It is a settled proposition of law that in a given case like this, merely because of recovery of weapons of crime, it cannot be taken as a proof of guilt of the accused. In the instant case, though the prosecution was able to prove that both the deceased died out of homicidal violence, it has miserably failed to connect the accused with the crime. The learned trial Judge has marshalled the evidence proper and narrated all the reasons and has taken a reasonable view, which in the opinion of the Court cannot be interfered with. The judgment of the lower court cannot be said to be lacking in reason or perverse. Hence, this Court is unable to notice any reason to interfere with the judgment of the lower court.

13.In the result, the criminal appeal and the criminal revision case fail and the same are dismissed.

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Asst. Registrar.

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Sub Asst. Registrar.

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To

1.The District Sessions Judge, Perambalur.
2.The Public Prosecutor, High Court, Madras.
3.The District Collector, Perambalur.
4.The Inspector of Police, Jayamkondam Police Station,
  Perambalur District.
5. The Director General of Police,
   Mylapore, Chennai.

1 cc to M/s. Siraj and Siraj, Advocate, sr. 47446

C.A.NO.1158 OF 2004 AND
CRL.R.C.NO.742 OF 2004

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